

**STATE OF ILLINOIS
HUMAN RIGHTS COMMISSION**

IN THE MATTER OF THE REQUEST
FOR REVIEW BY:

VERUNIKA DUJMOVIC

Petitioner.

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CHARGE NO.: **2008CF1656**

EEOC NO.: **21BA80717**

ALS NO.: **09-0466**

ORDER

This matter coming before the Commission by a panel of three, Commissioners Marti Baricevic, Robert S. Enriquez, and Greg Simoncini, presiding, upon the Petitioner's Request for Review ("Request") of the Notice of Dismissal issued by the Department of Human Rights ("Respondent")¹ of Charge No. 2008CF1656, Verunika Dujmovic ("Petitioner"); and the Commission having reviewed *de novo* the Respondent's investigation file, including the Investigation Report and the Petitioner's Request and supporting materials, and the Respondent's response to the Petitioner's Request; and the Commission being fully advised upon the premises;

NOW, THEREFORE, it is hereby **ORDERED** that the Respondent's dismissal of the Petitioner's charge is **SUSTAINED** on the following ground:

LACK OF SUBSTANTIAL EVIDENCE

In support of which determination the Commission states the following findings of fact and reasons:

1. The Petitioner filed a charge of discrimination with the Respondent on January 3, 2008. The Petitioner alleged her former employer Ann Taylor ("Employer"), a retail store, subjected her to harassment in retaliation for having previously filed a charge of discrimination, in violation of Section 6-101(A) of the Illinois Human Right Act (the "Act"). On July 21, 2009, the Respondent dismissed the Petitioner's charge for Lack of Substantial Evidence. On August 24, 2009, the Petitioner filed this timely Request.
2. The undisputed evidence in the investigation file shows the Petitioner was employed as a Desk Associate. As a Desk Associate, her primary duties were to assist customers on the sales floor, maintain merchandise and accessories, pack and fold clothes, and process items that had been placed "on hold" for customers.
3. On October 26, 2007, the Petitioner engaged in protected activity when she filed a charge of discrimination against the Employer with the Respondent.
4. The Petitioner alleges that thereafter, on three occasions, the Employer harassed her in retaliation for having filed the charge of discrimination. First, on December 2, 2007, she alleges the Employer retaliated against her when the Employer's store manager Sabina Hyderi told the Petitioner to stop assisting customers and instructed her to greet customers by the front entrance of the store. The Petitioner was instructed to greet customers for approximately one (1) hour.
5. Second, on December 4, 2007, the Petitioner arrived 30 minutes late to work. The Petitioner alleges she was late because Hyderi and another store manager, Nikki Cishek, had given the Petitioner

¹ In a Request for Review Proceeding, the Illinois Department of Human Rights is the "Respondent." The party to the underlying charge requesting review of the Department's action shall be referred to as the "Petitioner."

conflicting start times. When the Petitioner arrived to work, Cishek told the Petitioner that she should have properly notified a member of management that she was going to be late.

6. Finally, on December 29, 2007, a customer became hostile and belligerent when the Petitioner could not locate a sweater that the customer had requested be placed on hold. The customer complained to the Employer's Lead Desk Associate. The Petitioner believes, however, that some of her co-workers "plotted" this incident against her.
7. The Petitioner alleges Cishek and Hyderi scrutinized her work in order to find errors, that they criticized her and talked to her in a demeaning manner, sometimes in front of customers, that they spread rumors about her, and that they intentionally gave her conflicting information. The Petitioner argues the Respondent's investigator did not conduct a thorough investigation, twisted the facts and was "biased."

CONCLUSION

The Commission's review of the investigation file leads it to conclude the Respondent properly dismissed the Petitioner's charge for Lack of Substantial Evidence. If no substantial evidence of discrimination exists after the Respondent's investigation of a charge, the charge must be dismissed. See 775 ILCS 5/7A-102(D).

In order to establish a *prima facie* case of retaliation, the Petitioner must show that: (1) she engaged in a protected activity; (2) the Employer committed an adverse action against the Petitioner, and (3) a causal connection existed between the protected activity and the adverse action by the Employer. Welch v. Hoeh, 314 Ill.App.3d 1027, 1035, 733 N.E.2d 410, 416 (3rd Dist. 2000). The Petitioner must also establish that the protected activity occurred before the adverse action. Pace and State of Illinois, Department of Transportation, ___ Ill. HRC Rep. ___, (1989SF0588, February 27, 1995) (Slip op. at p. 13); Bregenhorn and C.C. Services, Inc., ALS No. S10596, 2004 WL 3312882 at 6 (Ill. HRC Apr 2, 2004).

Further, actionable harassment occurs when the workplace is permeated with discriminatory, ridicule, and insult that is sufficiently severe or pervasive to alter the conditions of the victim's employment and create an abusive working environment. Harris v. Forklift Systems, Inc., 510 U.S. 20, 114 S.Ct. 367, 371, 126 L.Ed.2d 295. In order to qualify as actionable harassment, the harassing behavior must occur frequently enough to constitute a term and condition of employment. Thus infrequent or isolated comments of a harassing nature will not constitute a violation of the act. Lever and Wal-Mart Stores, Inc., ___ Ill.HRC Rep. ___, p. 9, Charge No. 1998SF0551 (January 2, 2001). Asking the Petitioner to perform her job duties, or managing her in an abrasive or "heavy-handed" manner does not constitute actionable harassment. Patel v. Allstate Insurance Co., 105 F.3d 365 (7th Cir. 1997).

In the Petitioner's case, the allegations of the charge do not rise to the level of actionable harassment. The Petitioner relies primarily on three isolated incidents, and in each case the incident arose out of the performance of her job duties. The Petitioner's allegations that she was instructed to be door greeter for an hour, was criticized for not utilizing the proper protocol when calling in late to work, and that a customer complained when the Petitioner allegedly could not locate an item that had been placed "on hold" do not constitute conduct of a harassing nature sufficient to trigger the Act.

Aside from the Petitioner's speculation that these three incidents were retaliatory, there is no substantial evidence in the record to support this speculation. Mere speculation or conjecture is not substantial evidence of discrimination or retaliation. See Willis v. IDHR, 307 Ill.App.3d 317, 718 N.E.2d 240 (4th Dist. 1999). Therefore, assuming these three incidents could be construed as "adverse action," there is no substantial evidence of a causal connection between the adverse action and the Petitioner's protected activity.

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The Investigation file did reveal that some of the Petitioner's co-workers made fun of the Petitioner's accent, that the work environment was "clique-ish" and generally unfriendly, and that the Petitioner was not a part of the "clique." However, the Commission is limited to considering the charge before it on a request for review, which in this case alleges retaliation, See 775 ILCS 5/8-103 , and there is no evidence this conduct was retaliatory.

Finally, the Commission finds no substantiation to support the Petitioner's claim that the Respondent conducted an incomplete or biased investigation.

Accordingly, it is the Commission's decision that the Petitioner has not presented any evidence to show that the Respondent's dismissal of her charge was not in accordance with the Act. The Petitioner's Request is not persuasive.

THEREFORE, IT IS HEREBY ORDERED THAT:

The dismissal of the Petitioner's charge is hereby **SUSTAINED**.

This is a final Order. A final Order may be appealed to the Appellate Court by filing a petition for review, naming the Illinois Human Rights Commission, the Illinois Department of Human Rights, and Ann Taylor as Respondents, with the Clerk of the Appellate Court within 35 days after the date of service of this order.

STATE OF ILLINOIS

HUMAN RIGHTS COMMISSION

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Entered this 24th day of February 2010.

Commissioner Marti Baricevic

Commissioner Robert S. Enriquez

Commissioner Gregory Simoncini